

SFC CLERK RECORDED 07/08/2015

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY
REGARDING THE PROVISION OF
WASTEWATER COLLECTION
AND TREATMENT FOR THE THORNBURG
AMENDED MASTER PLAN AREA

The City of Santa Fe ("City") and Santa Fe County ("County") enter into this Memorandum of Agreement ("MOA") this 30th day of June, 2015, to provide for the City and County's understanding regarding wastewater discharge and wastewater treatment for a location outside the City of Santa Fe presumptive city limits.

RECITALS

WHEREAS, the City and County entered into a Settlement Agreement and Mutual Release of Claims ("Settlement Agreement"), dated May 19, 2008, to resolve several lawsuits concerning annexation of Las Soleras and issues relating to annexation generally. Section 2(m) of the Settlement Agreement states: "The City shall provide water and wastewater service within the presumptive city limits and shall not provide water and wastewater service outside the presumptive city limits unless required by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission, unless otherwise agreed upon between the City and the County in a separate written agreement"; and

WHEREAS, in 2009 the Third Amended and Restated Declaration of Covenants and Restrictions ("The Lift Station Declaration") was executed and recorded for the "Thornburg Service Area," an area of development that is located outside the City of Santa Fe presumptive city limits, as more specifically defined in Section 1(A)(2) of this MOA; and

WHEREAS, Article 7, Water and Wastewater Service of the Third Declaration describes how wastewater from the Thornburg Service Area is to be collected and discharged into the City's wastewater system and sewer treatment plant through a lift station and wastewater infrastructure owned by the non-profit corporation Turquoise Trail Master Association ("TTMA"). The agreement between the City and TTMA regarding TTMA collection and discharge of wastewater from the Thornburg Service Area into the City's sanitary sewer system is described in an "Exhibit B" to the Third Declaration; and

WHEREAS, the Third Declaration and its Exhibit B describe TTMA's maintenance and operation of its wastewater disposal system to serve the Thornburg Service Area; establishes a TTMA reserve fund for maintenance and operational costs; provides for the City's oversight of the TTMA reserve fund; and provides for termination of the agreement if another entity assumes TTMA's duties to provide sanitary sewer service to the Thornburg Service Area. The Third Declaration and Exhibit B permit TTMA to assign with the City's consent its wastewater disposal and wastewater system maintenance and operational duties if the City is satisfied that TTMA's duties under the agreement are adequately provided for in the assignment; and

WHEREAS, in 2012 TTMA and the County entered into an agreement whereby TTMA agreed to convey its lift station and wastewater infrastructure to the County and the County agreed to accept the TTMA system on certain conditions. One of the conditions is that the County obtain the City's consent to terminate the agreement between TTMA and the City that is described in Exhibit B to the Third Declaration; and

WHEREAS, the County has determined that it is willing and able to assume ownership and maintenance of the TTMA lift station and wastewater infrastructure and TTMA is prepared to convey its lift station and wastewater infrastructure to the County for the County's ownership and continued operation and provision of sanitary sewer service to the Thornburg Service Area; and

WHEREAS, City Ordinance, SFCC § 22-6.2 provides for a process whereby connections to the City's sanitary sewer service system for areas outside of the City of Santa Fe presumptive city limits can be made subject to approval and review by a water/wastewater review team consisting of City and County staff from the water division, the wastewater division, the City attorney's office, the County attorney's office, the land use departments and the City's office of affordable housing; and

WHEREAS, by this MOA between the City and the County, the City consents to the termination of Exhibit B to the Third Declaration between the City and TTMA and this MOA describes how the County will assume ownership, maintenance and operation of the lift station and wastewater infrastructure formerly owned by TTMA and continue the discharge of wastewater into the City's sanitary sewer system for treatment by the City's water treatment plant and thereby continue to provide sanitary sewer services to the Thornburg Service Area.

NOW THEREFORE the City and County agree as follows:

AGREEMENT

1. **DUTIES OF THE PARTIES:**

A. The County shall:

1. Accept the conveyance from TTMA of the lift station and wastewater infrastructure.
2. Own, operate and maintain the lift station and all wastewater infrastructure and associated appurtenances including the force main up to its connection with the City of Santa Fe's sewer system at the manhole located near Mutt Nelson Road for discharge and disposal of wastewater from the Thornburg Service Area. For purposes of this MOA, the Thornburg Service Area means "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A," all as described in Instrument #1362150, recorded in the records of Santa Fe County on January 10, 2005, in Book 577 Page 36-42, and including any

SFC CLERK RECORDED 07/08/2015

- subsequently approved boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.
3. Become a wastewater customer of the City.
 4. Not permit properties located outside the Thornburg Service Area to connect to the County's wastewater collection and sewer lift station system and infrastructure or the City's sanitary sewer collection and treatment system without prior written approval of the City and County pursuant to the Settlement Agreement and Mutual Release of Claims dated May 19, 2008.
 5. Comply with Federal, State and Local Law. The County agrees to maintain and operate the County wastewater collection and sewer lift station system as required by all applicable Federal, State, and local laws and shall comply with all applicable requirements imposed upon City utility customers. The City's affordable housing ordinance, SFCC §14-8-11(D), does not apply, pursuant to SFCC §22-6.2(G).
 6. Require the all properties within the Thornburg Service Area to have a water meter pursuant to the Customer Service Policies (County Policies) of the Santa Fe County Water Utility (County Utility), adopted by Resolution 2012-88, as the same may be amended from time to time. The County will collect the metered usage in accordance with County Policies, approximately on a monthly basis. The County will report the metered water usage and other pertinent billing information to the City on a monthly basis for use in calculating the invoice for the wastewater bill to be paid by the County in accordance with the City's most current rates.
 7. Pay to the City the sum of the City's monthly service fees under SFCC Section 22.7, as it may be amended from time to time, for wastewater collection and treatment services provided for the wastewater discharge by the TTMA for properties within the Thornburg Service Area.
 8. Pay or cause to be paid the City's Utility Expansion Charge incurred by properties within the Thornburg Service Area under SFCC Section 22-6.6.
 9. Agree that the discharges from any commercial/industrial properties within the Thornburg Service Area shall be subject to the provisions of SFCC §22.9, *Industrial Pretreatment Regulations and Procedures*, and SFCC §22.10, *Wastewater Extra Strength Surcharge Program*, as they may be amended from time to time.
 10. Agree that if determined to be necessary by the City, the City will issue a significant industrial user permit to appropriate commercial/industrial properties within the Thornburg Service Area in accordance with SFCC§22.9, in which case all permit

conditions and requirements must be met by Santa Fe County or any other occupant of the property as a condition of service.

B. The City:

1. Hereby consents to the termination of the agreement described in Exhibit B to the Third Declaration and to the release to TTMA of the \$25,000.00 revenue fund required to be maintained by TTMA as provided in Exhibit B of the Third Declaration.
2. Shall accept wastewater from the County's lift station and wastewater infrastructure from the Thornburg Service Area.

C. The City and County agree:

1. The City's affordable housing ordinance, SFCC § 14-8-11(D), does not apply to properties outside of the presumptive city limits and will not apply to the County and the County's wastewater customers within the service area of the County's wastewater collection system.
2. To conform to the requirements of SFCC § 22-6.2(I), as may be amended from time to time, when submitting and reviewing applications for City sewer service connections for property outside the presumptive city limits including but not limited to the Thornburg Service Area.
3. This MOA and its term and conditions shall supersede and replace the agreement described in the Exhibit B to the Third Declaration.

2. **EFFECTIVE DATE AND TERM:** This MOA shall become effective on the date of execution by the City and County, whichever occurs last. The term of this agreement shall be until such time as the County no longer owns, operates and maintains the lift station and wastewater infrastructure, or until the Thornburg Service Area is annexed by the City, or until such time as the County, in its sole discretion, ceases to be a wastewater customer of the City or otherwise permanently ceases to discharge wastewater from the TTMA lift station into the City wastewater system.

3. **ASSIGNMENT:** The County or City shall not assign or transfer any interest or rights in this MOA without the advance written approval of the other party. Any attempted assignment or transfer without the other party's advance written approval shall be null and void and without any legal effect.

4. **LIABILITY:** Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOA. Each party shall be liable for its actions in accordance with this MOA. Any liability incurred by the County or the City in connection with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, et. seq. and as amended. The County, City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity; do not waive any defense; and do not waive any limitation of liability pursuant to law. No provision in this MOA modifies or waives any

SFC CLERK RECORDED 07/08/2015

provision of the New Mexico Tort Claims Act.

5. AMENDMENT: This MOA shall not be altered, changed, or amended except by an instrument executed in writing signed by all parties.

6. NO THIRD-PARTY BENEFICIARIES: The parties do not intend to create, and this MOA does not create, any third-party beneficiaries under this MOA. Without limiting the generality of the foregoing, no action to enforce the terms of this MOA or for damages for breach thereof may be brought against either party by any person who is not a party to this MOA.

7. REVENUE SOURCE TO MEET OBLIGATIONS: The obligations under this MOA in a fiscal year shall be payable solely from fees and charges, however denominated, collected by the parties for the provision of wastewater services that fiscal year. Without in any way limiting the generality of the foregoing, nothing in this MOA imposes a duty on the parties to pay any obligation arising hereunder through tax revenues.

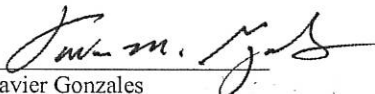
8. GOVERNING LAW: This MOA shall be governed by, and construed in accordance with, the laws of New Mexico.

9. SUCCESSORS AND ASSIGNS: This MOA will inure to the benefit of the parties' successors or assigns.

10. ENTIRE AGREEMENT: This MOA represents the entire understanding between the County and the City and supersedes any prior agreements or understandings with respect to the subject of this MOA. No changes, amendments or alterations to this Agreement will be effective until in writing and signed by the parties.

IN WITNESS WHEREOF, the parties set their hands:

FOR THE CITY OF SANTA FE

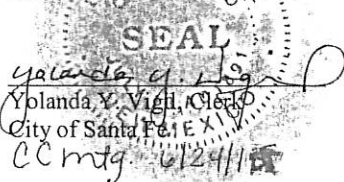

Javier Gonzales

Mayor, City of Santa Fe

Date

6/30/15

ATTEST:


Yolanda Y. Vigil, Clerk
City of Santa Fe, N.M.
CC mtg. 6/24/15

6-30-15
Date

Approved as to form:

NDM
Kelley Brennan
City Attorney

6/2/15
Date

Approved:

[Signature]
Oscar Rodriguez
Finance Director
City of Santa Fe

6-29-2015
Date

FOR SANTA FE COUNTY

[Signature]
Robert A. Anaya, Chair
Santa Fe County Board of County Commissioners



ATTESTATION:

Geraldine Salazar 5-26-2015
Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to form:

[Signature]
fr Gregory S. Shaffer
County Attorney

5-26-2015
Date

[Signature]
Carole H. Jaramillo
Finance Department

5/26/15
Date



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

MEMORANDUM OF AGREEMENT
PAGES: 6

I Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of July, 2015 at 08:53 50 AM
And Was Duly Recorded as Instrument # 1769008
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Deputy [Signature] Geraldine Salazar
County Clerk, Santa Fe, NM